Division and Colonel Mohamed Daud bin Abu Bakar, Director of Army Training in the Army Staff Division, Ministry of Defence as "officers on the posted strength or attached to any Division/Department in the Ministry of Defence" must come under the command of a junior-ranking officer, Major Idrus bin Maaris.

It was however suggested that the question of disciplinary measures being taken within Camp Mindef against any officer above the rank of Major had never arisen. This did not mean that such a question might never arise. If it ever should, then in this set-up, the public would be treated to the spectacle of a higher-ranking officer coming under the command of an officer his junior in rank. It might of course be a mere coincidence (and a great tribute) that no officer of such exalted rank had been so disciplined in the history of the Malay Regiment and the Malaysian Army, but it would be startling to hear of any suggestion, as it would appear from an affidavit, that a line was drawn separating majors and officers of lower rank from officers above the rank of major for the purpose of discipline, and that court-martials were meant for the former and not for the latter group and that for this reason, it was not incongruous for a Major to be the Camp Commandant of all officers, whatever the ranks, posted to Camp Mindef. For myself, I am not sure that Colonel Yaacob bin Mohd. Zain really meant what he would appear to have affirmed to in his affidavit.

In my view, and with respect, the definition of Commanding Officer in the Malay Regiment Enactment fits Colonel Mohamad Daud bin Abu Bakar, the Director of Army Training in the Army Staff Division, Ministry of Defence, to which the appellant was at all relevant times posted. The appellant himself stated in no uncertain terms that he regarded this officer as his commanding officer. This officer himself admits that the appellant was posted to "my directorate" and that in his capacity as Director of Army Training he was to ensure that the appellant like any other Staff Officer in his directorate carried out his routine staff functions efficiently in accordance with his schedule of duties. This must imply that he was the officer ordinarily empowered to give commands to the appellant in the execution of his duties, and would know if there was any inefficiency, dereliction of duty or insubordination. Even then, he said that he had no disciplinary powers over the appellant or any other members of his Training Staff. This was a strange dichotomy of responsibility in a superior officer. No reason for this division was ever advanced, and no explanation given for a new definition of a commanding officer.

A court-martial like any other inferior court of justice in the country is subject to the over-all supervision of the High Court: see *Grant* v. *Gould & Ors.* (1792) 2 Hy. Bl. 69 where the court held that the question of the jurisdiction of the Court-martial was material to the consideration whether prohibition would issue. With respect, on the conclusion that the affidavits, apart from any question as to their admissibility, do not support the view of the Convening Officer, prohibition must lie and an order issue.

This conclusion relieves me from having to deal with a question that frankly bothered me greatly at the hearing. It was: Could the Convening Officer acting under Rule 36(3)(b)(i) of the Rules of Procedure over-rule the finding of the Court-martial as to its jurisdiction? I am aware Rule 36 would appear to permit him to do so. I also concede that, as said, a court-martial is "neither fish nor fowl." But rules of procedure are laid down and provisions are also made for rules of evidence. Though the rules of procedure are somewhat laxer than our Criminal Procedure Code and the rules of evidence are the looser ones of England and not those of our strict Evidence Act, a Court-martial is never-the-less by these rules an exercise in the Rule of Law. For the Convening Officer to do as he did would mean that he had over-ruled a finding of a competent court of jurisdiction and he would be doing so, sitting alone and in camera, and of his own motion, that is to say. without benefit of arguments. It would also be to exercise virtual powers of appeal where no appeal lay.

Suffian L.P. concurred.

Appeal allowed.

Solicitors: *Ram, Rais & Yap.*

SARAWAK ELECTRICITY SUPPLY CORPN. v. WANG TECK CHAI

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Ong Hock Sim F.J.) April 23, 1975]

[Kuching — Federal Court Civil Appeal No. 118 of 1974]

Employment — Termination of employment by statutory corporation — Sarawak Electricity Supply Corporation Ordinance, 1962, s. 30.

In this case the appellants had given the respondent one month's notice of termination of services. The respondent thereupon brought an action to the High Court for wrongful termination and dismissal. The learned trial judge held that the respondent had been wrongfully dismissed in contravention of the rules of natural justice. The appellants appealed.

Held, allowing the appeal: the appellants in this case had lawfully exercised their right to terminate the services of the respondent.

Case referred to:-

(1) *Government of Malaysia* v. *Lionel* [1974] 1 M.L.J. 3.

FEDERAL COURT.

J. Grimberg (*Yap Han Boon* with him) for the appellant.

S. Sahathevan for the respondent.

Ong Hock Sim F.J. (delivering the judgment of the Court): We allowed the appeal of the Sarawak Electricity Supply Corporation from a judgment of the High Court at Kuching awarding the respondent the sum of $40,181.55 with interest thereon at the rate of 6% per annum from the July 16, 1974 until payment with costs to be taxed on the higher scale for wrongful termination of the respondent's employment with the Corporation. We said we would give our reasons. We now do so.

The respondent commenced employment on November 1, 1957 with the Sarawak Electricity Supply Co. Ltd. On December 14, 1959 the respondent signed a letter in the following terms:—

"Conditions of Service

I, Wang Teck Chai ... employed in the capacity of Clerk at Kuching by the Sarawak Electricity Supply Co. Ltd. on the establishment of that Company, agree to the Standing Orders for Established Staff Section 1 dated 1.7.59 as governing my conditions of employment as from the 1st January 1960, on which date the Standing Orders will become effective.

I understand the Board of Directors of the Sarawak Electricity Supply Co. Ltd. reserve the right to amend the Standing Orders from time to time and interpret their meaning.

My agreement to the new Conditions of Service also serves as a Declaration of Secrecy in accordance with Standing Order No. 358."

The respondent complained in court that he signed the document without fully realising the implications and was not given time to read it fully. He appreciated however "I have to abide by the Standing Orders. I have no alternative." Of course he had. He could have resigned. It would appear respondent's relationship with the Company was cordial. In January 1961 he was transferred to control of the Costing Section, As from January 1, 1963 the Company was converted into a Statutory Corporation by the Sarawak Electricity Supply Corporation Ordinance 1962. Section 30 is relevant and we quote:—

"30. (1) Every officer on the establishment of the Company shall, upon the commencement of this Ordinance, be deemed to be *transferred* from the service of the Company to the service of the Corporation *on terms and conditions of service* and emoluments *no less favourable* than those which he enjoyed immediately prior to the commencement of this Ordinance.

(2) *Nothing* in this section *shall* be deemed to *affect the right of the Corporation to terminate the employment* of any such employee transferred to the service of the Corporation, or to vary his rate of pay or conditions of service, *in the manner and to the extent that the Company could have done* had he continued in the service of the Company." (Italics are ours).

Late 1963 or early 1964, the respondent started the Sarawak Electricity Supply Corporation Employees Union and was its Secretary throughout. He was given leave whenever he applied to do Union work in Miri and Sibu. He was also given extraordinary leave to attend a seminar in Kuala Lumpur and to study union's work. In 1967 he was given leave for training in trade union in Canada.

The first discordant note was in November 1965 when he was informed of three charges against him and warned against future repetitions. No disciplinary action appeared to have been in the mind of the District Manager as was confirmed by his letter of January 17, 1966. In the following month he applied for the post of Finance Clerk and was offered the appointment. While in that post, a shortage of cash was discovered following a surprise check by the Auditor. Disciplinary action was taken and he was reverted to general clerk as from March 1, 1967. The next letter was that of March 23, 1968 to the effect:—

"As directed by the Members of the Corporation, one calendar month's notice of termination of your services commencing on the first of April 1968 is hereby given."

Following this, in February 1970, the respondent issued a writ and says in paragraph 2 of his Statement of Claim:—

"2. On the 1st of May, 1968 the defendant wrongly terminated the plaintiff's said employment and dismissed him therefrom and refusing to employ the plaintiff any longer.

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(i) The plaintiff was employed by the defendant in various capacities as Junior Clerk, Clerk-in-Charge and Senior Clerk from the 1st November, 1957 to the 1st May, 1968.

(ii) By a letter dated the 23rd March, 1968 from the Chairman of defendant Company to the plaintiff the defendant wrongly terminated the plaintiff's employment with the defendant with effect from the 1st of May 1968 and refuse to employ the plaintiff any longer.

(iii) At the time of the said termination of employment, the plaintiff had been in receipt of a salary of $455.00 a month.

(iv) The plaintiff has not been able to get alternate employment and there is no likelihood of him getting other suitable employment."

Significantly, the particulars made no mention in what way it was alleged that the employment was wrongly terminated, and no reply was filed to paragraph 3 of the Statement of Defence, which reads: —

"3. The defendant states that on the 23rd day of March 1968, the plaintiff was served with one calendar month's notice in writing terminating his services with the defendant in accordance with section 49 of the Standing Orders of the Sarawak Electricity Supply Corporation which reads as follows:—

'The services of an employee on the establishment may be determined by one full calendar month's notice at any time *without cause assigned, unless his conditions of service provide otherwise*'." (Italics are ours).

At the hearing in the High Court, respondent's counsel urged that his client had been "dismissed", though with notice, in contravention of the rules of natural justice. There had been failure to follow Standing Order 98 which sets out the Disciplinary Procedure. We agree, with respect, with the appellant's counsel that the learned judge erred in finding that the respondent had been dismissed. In our view, the learned judge had misdirected himself as to the validity of the Standing Orders. We would agree that Standing Orders, since amended without recourse to section 20, may perhaps be held *ultra vires*. We do not, however, hold that it was necessary for the Corporation to have taken any action to "adopt" the Standing Orders having regard to section 30. The judge was further in error when he said "Assuming for the moment that the Standing Orders is applicable it is not disputed that the SESCO has the right to determine the appointment under Standing Order 49 for *inter alia* gross misconduct and in cases of inefficiency." Standing Order 49 made no mention of misconduct or inefficiency as a ground for issue of the notice. No cause need be assigned for its issue. Its validity was not questioned by the respondent, as is clear from the pleadings. The respondent's acceptance that the Standing Orders were binding on him on his own admission that he tendered his resignation pursuant to Standing Order 45, which subsequently he was persuaded to withdraw. In saying "As has been indicated already the plaintiff was sometime in March 1967, informed that disciplinary proceedings would be taken against him. Why then were the proceedings dropped?", the judge overlooked the letter of March 9, 1967 under the heading "Disciplinary Action under Standing Order 98" demoting the respondent. There is no complaint that *he was not heard then.*

In acting, as it purported to do, the Corporation was exercising the same right to terminate, as the Company had, by virtue of section 30(2). As Viscount Dilhorne said in *Government of Malaysia* v. *Lionel*[1]:—

"Under the laws of Malaysia a similar distinction between dismissal and termination of services appears to exist and in their Lordships' opinion there is nothing in the Constitution which affects the right of the Government to terminate temporary employment in accordance with the terms of the engagement.

In their Lordships' opinion Syed Othman J. was right to distinguish between dismissal and termination of services in accordance with the terms of the engagement; and right in holding that the respondent had not been dismissed but had had his services validly terminated."

We intimated to the appellant's counsel that we were of the view that he need not deal with grounds of appeal other than Ground 1. He has satisfied us as to the substance and merit of that ground and we do not propose to deal with or consider his other grounds.

We accordingly allow the appeal and set aside the judgment of the High Court at Kuching with costs here and in the court below.

Appeal allowed.

Solicitors: *Reddi & Co.; Batternberg & Talma.*

LEE PHEK CHOO v. ANG GUAN YAU & ANOR.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Ong Hock Sim F.J.) April 23, 1975]

[Kuching — Federal Court Civil Appeal No. 168 of 1974]

Trusts — Declaration of alleged trust — Alleged trust relating to land — No writing to indicate declaration of trust — Statute of Frauds — Applicable to Sarawak — Application of Laws Ordinance (Sarawak Cap. 2), s. 2.

One Teo Kim Tee (f) owned some landed properties and before her death she transferred the properties to the appellant, her daughter-in-law. The documents of transfer were duly registered. The respondents alleged that the deceased had intended that the properties were to be held on trust "to be divided amongst her grandchildren after her death." There was no writing to indicate any declaration of trust. The trial judge held that there was a trust of the properties. The appellant appealed.

Held, allowing the appeal: as the Statute of Frauds applied to Sarawak, and as there was no writing to manifest the declaration of trust, it could not be that a trust was created in respect of the properties.

Cases referred to:-

(1) *Knight* v. *Knight* (1840) 3 Beav. 148 at p. 173.

(2) *Chin Yuk Kon* v. *Chop Koong Onn* [1949] S.C.R. 19 at p. 20.

(3) *Grant* v. *Grant* 55 E.R. 770.

(4) *Wan Naimah* v. *Wan Mohamad Nawawai* [1974] 1 M.L.J. 41.

FEDERAL COURT.

Patrick Tan for the appellant.

S. Sahathevan for the respondent.

Lee Hun Hoe C.J. (Borneo): We allowed this appeal and stated we would give our reasons later. We do so now. There were some ten grounds of appeal.

The crucial issue in the appeal was whether there was a trust or not. In the light of the view we took on the issue we did not consider it necessary to go into other grounds. Before we go into the issue it would be necessary to outline some facts. Ang Leong Jut had established a business in Sarawak. He left for China together with his younger brother, Ang Kaw Chap and their mother, Lim Ee Tam (f). They stayed there for about a year. While there he married Teo Kim Tee (f). As he had no male issue at the time he bought first respondent/first plaintiff, previously known as Chong Beng, then aged about 8 years as a son in Hokkien Province, China. They returned to Sarawak in either 1913 or 1914 and lived at Main Bazaar. He had two children by Teo Kim Tee (f), namely, Mary Ang Jin Yeh (f) and Ang Guan Soon. Later, they moved to Padungan. At that time first respondent was about 10 years old. Ang Leong Jut died in Singapore and was buried there. The names of his children were engraved on his tombstone. First respondent was then about 14 years old.

There was no document in respect of the adoption of first respondent. Neither was there a ceremony of any kind or feast. The adoption was never registered. First respondent has three boys and two girls. Ang Guan Soon married appellant/defendant and they have one boy and two girls. Mary Ang Jin Yeh (f) has three boys and a girl.

Teo Kim Tee (f) was admitted to the hospital on October 3, 1961 and died on November 29, 1961. She owned a shophouse at Padungan where the family lived and also four pieces of rubber land. In 1961 deceased gave instructions to Lam Teng Kui (DW2) Chief Clerk of a legal firm to prepare the transfer of her properties. She gave him the titles and said that the properties were to be transferred to her daughter-in-law, the appellant. After the documents were ready, deceased was admitted to the hospital. So, Lam took the documents to the hospital and deceased signed them there on October 7, 1961. The consideration for the shophouse was $12,000 and the four pieces of rubber land $18,000. The documents were duly registered.

Sometime in 1964 appellant sold the Padungan shophouse for $47,000 and used part of the proceeds to buy a house at Central Road for $25,000. In December 1964, the family moved to the new house. First respondent alleged that it was then that he discovered that the properties were not in deceased's name and that the new house was registered in appellant's name. He then asked appellant and her husband about the matter and indicated his desire to see the document showing the distribution of properties to deceased's grandchildren. Except for allegations, there is no evidence of such a document or a will for that matter. Appellant told him that deceased had sold her the properties for $30,000. So, he consulted a lawyer in 1967. As a result, a letter dated October 9, 1967 was sent to appellant referring to the properties. Paragraph 5 of the letter reads:—

"The instructions from our client are that it was the wish of the deceased before her death that these lands should be equally divided between all the grandchildren of the deceased, but that desire, however, appears not to have been carried out by either your husband or yourself."

Through her lawyer, appellant wrote to first respondent a reply dated October 17, 1961 on the following terms:—

"Our client emphatically denies that your client is a son of the late Madam Teo Kim Tee, our client's mother-in-law. Nor was there any truth in your client's allegation as con-